SINGAPORE REPORTS

JB Jeyaretnam v Public Prosecutor and another appeal

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NOS 205 OF 1988 AND 215 OF 1988
CHAN SEK KEONG J
10 OCTOBER 1989

Criminal Law — Public entertainment without a licence — Speech at opening of political party's premises — Whether speeches 'public entertainment' — Public Entertainments Act (Cap 257, 1985 Ed), ss 2, 13(2) 14 & 18(1)(a) — Public Entertainments Rules 1969 — Police Act 1967 [Mal], s 27 — House To House and Street Collections Act (Cap 128, 1985 Ed), s 3(2)

Criminal Procedure — Sentencing — $3,500 fine for offence of providing public entertainment without licence — Whether excessive — Appellants had deliberately broken the law — No breach of the peace — Fine reduced to $1,500 — Public Entertainments Act (Cap 257, 1985 Ed), s 18(1)(a) — Public Entertainments Rules 1969

Constitutional Law — Freedom of speech — Whether violated by laws regulating licensing of public entertainment — Public Entertainments Act (Cap 257, 1985 Ed), ss 13(1) & 14 — Constitution of the Republic of Singapore, art 14(2) — Federal Constitution [Mal], art 10(2) — Constitution of India, art 19 — Public Meetings and Processions Act 1969 [St Christopher, Nevis and Anguilla], s 5 — Constitution of St Christopher, Nevis and Anguilla, s 10

Words and Phrases — 'Supply' — Public Entertainments Act (Cap 257, 1985 Ed), s 18(2)

The first appellant, JB Jeyaretnam, was convicted on the charge of providing public entertainment without a licence issued under the Public Entertainments Act (Cap 257, 1985 Ed) ('the Act'), s 18(1)(a). The second appellant, Wong Hong Toy, who was tried together with the first appellant, was also convicted on a similar charge. The appellants were each sentenced to a fine of $3,500 and in default two weeks' imprisonment. The appellants have appealed against conviction and sentence.

The first appellant, who was the secretary-general of the Workers' Party ('WP'), a duly registered political society under the Societies Act (Cap 311, 1985 Ed), submitted an application, in the prescribed form, for a licence under the Public Entertainments Rules 1969 to hold the opening ceremony of the WP's premises. The application was rejected. Both the appellants submitted they had no case to answer. The first appellant has in this appeal contended that his conviction was wrong on the following grounds. His speech was not per se public entertainment under the Act, and therefore no licence was required. If the speech was public entertainment under the Act, there was no evidence to show that he had provided it. The decision of the licensing officer in rejecting his application was contrary to law and null and void and was an unjustifiable interference with his right to freedom of speech and expression conferred by art 14(1) of the Constitution of the Republic of Singapore. The second appellant associated himself with all these arguments. Notwithstanding the extended meaning of 'public entertainment', the first appellant contended, first, that the Act could not have been intended to and did not apply to the making of speeches in a public place on the ground that, prior to the proceedings against him, no one else had been prosecuted for making speeches in public without a licence. He referred to speeches made at the openings of factories and offices and at wedding dinners in restaurants. The first appellant contended, secondly, that an address was not entertainment if its dominant purpose was not entertainment.

The second appellant submitted that his speech was a welcoming speech and not an address, without explaining the difference between the two. He submitted that the evidence showed that he had merely participated in the public entertainment that was provided. The first appellant also claimed that the decision of the licensing officer in refusing his application was not made in relation to any of the matters in respect of which the Constitution has permitted Parliament to restrict the right to freedom of speech and expression. The decision was thus bad in law and therefore since he was just exercising his constitutional right, no offence had been committed.

Held, dismissing the appeals as regards the convictions but allowing the appeals as regards sentence:

(1) The first appellant's argument had no substance for the following reasons: first, the first appellant has produced no evidence to show that in the instances cited by him, the persons involved were not prosecuted on the ground or grounds stated by him. Absence of a prosecution does not mean absence of an offence.

(2) Secondly, there is also no basis for assuming that restaurants, factories and offices are places to which the public or any class of the public has access.

(3) Thirdly, by reason of the statutory definition, whether an activity is 'public entertainment' is not determined by its purpose or its nature and/or effect but simply by its form. The ordinary meaning of the word 'address' is a speech made to a group of people, usually on a formal occasion. Here, it was the opening of the WP's branch premises.

(4) There is no reason to suggest that the same word in s 2(1) does not bear its ordinary meaning. The second appellant submitted that the speech of the second appellant was a welcoming speech and not an address, without explaining the difference between the two.

(5) The next submission that he had merely participated in the public entertainment that was provided had no substance. The word 'provide' in the context of s 18(2) means 'supply'. A person may supply the entertainment by performing it himself or by engaging someone else to perform it. Whatever the precise effect of s 18(2) may be, it does not provide a defence to the appellants as they were not mere participants but were the organizers of the event. The second appellant, as chairman of the WP, could not say that he had nothing to do with the organization of the event.

(6) Since the trial judge had refused to allow the licensing officer to explain his reasons for rejecting the first appellant's application for a public entertainment licence, the correct position must be that as the matter now stood neither the first appellant nor the court knew the reasons for the rejection of his application. The purpose of s 13(2) is not to enable a person charged for an offence under the Act to ask for the reasons at the trial. The purpose is to enable an aggrieved applicant to appeal to the Minister under s 14 of the Act.

(7) In the court's view, the only available defence to the charges, in the context of this case, would be that the Act is

unconstitutional as being in contravention of art 14(2) of the Constitution. However, neither appellant made any submission to that effect.

(8) The test of constitutionality, ie that the power given to restrict the freedom of speech must not be arbitrary and untrammelled, and that there need not be any express guidelines for the exercise of power to restrain freedom of speech, are relevant to determine whether the Act contravened art 14. The Act was not unconstitutional and thus the appellants were properly convicted on the charges faced by them.

(9) The district judge, in imposing the fine of $3,500 each, took into account the following factors: (1) the previous convictions of the appellants (five in respect of the first appellant and four in respect of the second appellant); (2) their deliberate intention to commit the offence; and (3) their mitigation speeches. The Privy Council in another decision concerning the appellant, had, however, declared that the appellants had been wrongly convicted of the four offences which the district judge took into account. The deputy public prosecutor submitted that those four convictions were in any case irrelevant to the present conviction. On this basis, the first appellant had one previous conviction for an unrelated offence and the second appellant had no previous convictions. The only other negative factor against the appellants was that they had deliberately broken the law. That is not an exceptional factor. There was no evidence that any disorderly conduct or breach of the peace had occurred at or in connection with the addresses made by the appellants or that any member of the public or any of the residents of the neighbouring premises had been unduly inconvenienced. Taking into account all the circumstances of this case, including the nature of the offence and conduct of the appellants, the court was of the view that a fine of $1,500 would be the appropriate sentence. The appeals against conviction were dismissed and the appeals against sentence allowed to the extent that the fines were reduced to $1,500 in respect of both appellants.

Cases referred to

1 *Madhavan Nair & Anor* v *PP* [1975] 2 MLJ 264 (distd)
2 *Lau Dak Kee* v *PP* [1976] 2 MLJ 229 (distd)
3 *Indulal* v *State of Gujarat* AIR 1963 G 259 (folld)
4 *Arthur Francis* v *Chief of Police* [1973] AC 761 (folld)
5 *JB Jeyaretnam* v *Law Society of Singapore* [1988] 3 MLJ 425 (refd)

Legislation referred to

Constitution of the Republic of Singapore art 14(1)
House To House And Street Collections Act (Cap 128, 1985 Ed) s 3(2)
Public Entertainments Act (Cap 257, 1985 Ed) ss 2, 13(2), 14, 18(1)(a)
Public Entertainments Rules 1969
Federal Constitution [Mal] art 10(2)
Police Act 1967 [Mal] s 27
Constitution of St Christopher, Nevis and Anguilla s 10
Public Meetings and Processions Act 1969 s 5
Constitution of India art 19

First appellant in person.
Ling How Doong for the second appellant.
Sowaran Singh (Jennifer Marie (Ms) with him) for the Public Prosecutor.

Cur Adv Vult

Chan Sek Keong J: The first appellant, JB Jeyaretnam, was on 15 June 1988 convicted on the following charge:

> ... that you, on or about January 1987, at about 1.10pm at the five foot way of house No 80 Boat Quay, Singapore, did provide public entertainment without a licence issued under the Public Entertainments Act (Cap 257), to wit, by addressing a public gathering and you have thereby committed an offence punishable under section 18(1)(a) of the Public Entertainments Act (Cap 257, 1985 Ed).

The second appellant, Wong Hong Toy, who was tried together with the first appellant, was also convicted on a similar charge, save that his address was made at about 1.05pm. The appellants were each sentenced to pay a fine of $3,500 and in default two weeks' imprisonment. The fines have been paid. The appellants have appealed against conviction and sentence.

The relevant facts were as follows. On 5 January 1987, the first appellant, who was the secretary-general of the Workers' Party ('WP'), a duly registered political society under the Societies Act (Cap 311, 1985 Ed), submitted an application, in the prescribed form, for a licence under the Public Entertainments Rules 1969 to hold the opening ceremony of the WP's premises at No 80-A Boat Quay on 10 January 1987 from 12 noon to 4pm. The application, which was signed by the first appellant, listed both the appellants as speakers and the following entertainment to be provided: (1) lion dance, (2) Indian drums, and (3) Malay kompang. The form also stated that a 'PA system would be used'.

The application and the covering letter were received at about 2.45pm on the same day by the licensing officer appointed under the Public Entertainments Act (Cap 257, 1985 Ed) ('the Act'). The covering letter requested that the licence be issued by 9 January 1987. The application was rejected on 9 January 1987 and the letter of rejection was despatched to the first appellant's office on 10 January 1987 between 8.30am and 9.00am and was received by the office attendant.

On 10 January 1987 at about 1pm, the police received information that a crowd of about 150 people had gathered along the frontage of No 80, Boat Quay to hear the first appellant speak. There was also a lion dance in the vicinity. PW1, a police superintendent, went to investigate. He saw a crowd of people along the frontage of No 80, Boat Quay and the first appellant standing behind a rostrum addressing them. PW1 went up to the rostrum and asked the first appellant whether he had a permit. The first appellant's reply was:

> No, I don't have a permit. Yes you can. You can have my name and address. Alright. Yes, you can take action. I have just been informed by the police officer that we do not have a permit for this. (Jeerings)
>
> The short answer to this, my friend, is that we applied for a permit and were told that it was not granted. So we decided to carry on. (Pause)

The second appellant was also present at the scene. He was seen by PW2, another police officer, who saw a crowd of

about 100-200 persons with some 60-80 sitting on chairs in front of the pavement of No 80, Boat Quay. PW2 went there to ensure that there was no breach of the peace. He found an orderly crowd. He saw and heard the second appellant addressing the crowd in Mandarin after the master of ceremonies had addressed the gathering. After the second appellant had spoken, the first appellant spoke. Another police officer, PW3, who was also at the scene, testified that he had made a tape-recording of the speeches and that there were microphones on the rostrum from where the speeches were made.

That, in brief, was the evidence adduced by the prosecution. Both the appellants submitted they had no case to answer. Their submissions were rejected by the district judge who held that the evidence, if unrebutted, would warrant their conviction on the charges faced by the appellants. Accordingly, he called for their defence and, upon the appellants electing not to enter their defence, convicted both of them.

The first appellant has in this appeal contended that his conviction was wrong on the following grounds:

(a) his speech made at No 80 Boat Quay was not per se public entertainment under the Act, and therefore no licence was required;
(b) if the speech was public entertainment under the Act, there was no evidence to show that he had provided it;
(c) the decision of the licensing officer in rejecting his application was contrary to law and null and void and was an unjustifiable interference with his right to freedom of speech and expression conferred by art 14(1) of the Constitution of Singapore.

Counsel for the second appellant associated himself with all these arguments, which I will now consider.

Section 18 of the Act provides as follows:

> (1) Any person who provides or assists in providing any public entertainment not being a public entertainment exempted under section 15
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> (a) without a licence issued under this Act;
> (b) while the licence is suspended;
> (c) in contravention of any condition of a licence; or
> (d) in contravention of this Act or any rules made thereunder;
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.
>
> (2) For the purposes of this section no person shall be deemed to have provided or assisted in providing public entertainment merely by reason of his having taken part in the public entertainment provided.

The expression 'public entertainment' as used in the Act has a wider meaning than its ordinary meaning. Section 2 defines the expression to *include* the activities specified in paras (a) to (o) 'in any place to which the public or any class of the public has access whether gratuitously or otherwise, but does not include' the activities specified in paras (i) to (iv) (viz public entertainment at state functions, religious ceremonies or rites, and meetings of public companies, trade unions, political associations or societies from which non-members are excluded). Most of the activities included in the definition would qualify as entertainment in its ordinary sense of amusements and diversions, eg plays, operas, fireworks displays, circuses, parades, exhibitions of films, models, etc. Others such as 'play-readings, recitals, lectures, talks, addresses, debates and discussions' in para (l) may be performed for more serious purposes than entertainment in its ordinary sense. Some of the specifically excluded activities, eg religious rites and ceremonies, are not entertainment or meant to be entertaining.

Notwithstanding the extended meaning of 'public entertainment', the first appellant contended, first, that the Act could not have been intended to and did not apply to the making of speeches in a public place on the ground that, prior to the proceedings against him, no one else had been prosecuted for making speeches in public without a licence. He referred to speeches made at the openings of factories and offices and at wedding dinners in restaurants, which events were regularly reported by the media. He also referred to a recent literary event, viz the launching of a book at Raffles Place when speeches were made, without a licence under the Act, and no one had been prosecuted in connection with the event. This attitude on the part of the authorities, he submitted, was an indication as to the intention of the Act.

The first appellant contended, secondly, that an address was no entertainment if its dominant purpose was not entertainment, and that would explain why there were no prosecutions in connection with speeches 'at wedding dinners in restaurants (which were to celebrate the nup tials) and at openings of factories and offices (which were to celebrate the openings)'. Similarly, it was argued that the speeches made at No 80 Boat Quay were to celebrate the opening of the WP's branch premises and not to entertain the guests.

In my view, neither argument has any substance for the following reasons: first, the first appellant has produced no evidence to show that in the instances cited by him, the persons involved were not prosecuted on the ground or grounds stated by him. Absence of a prosecu tion does not mean absence of an offence. Secondly, there is also no basis for assuming that restaurants, factories and offices are places to which the public or any class of the public has access. No person has access to a restaurant if his patronage is rejected by the restaurant, and even if he is accepted as a customer, he cannot be said to have access to another part of the restaurant where another function is being held, except by an invitation to that function. Thirdly, by reason of the statutory definition, whether an activity is 'public entertainment' is not determined by its purpose or its nature and/or effect but simply by its form.

In the present case, there was no dispute that the appellants had addressed a crowd of people at a public place. The only issue is whether their speeches were public entertainment. The ordinary meaning of the word 'address' is a speech made to a group of people, usually on a formal occasion. Here, it was the opening of the WP's branch premises. There is no reason to suggest that the same word in s 2(1) does not bear its ordinary meaning. This was precisely what had occurred on this occasion. The first appellant had never contended that his speech was not an address in its ordinary meaning.

However, the second appellant contended otherwise. His counsel submitted that the speech of the second appellant was a welcoming speech and not an address, without explaining the difference between the two. If the second appellant had merely said: 'I welcome you to this official opening of the Workers' Party branch office. I now call upon [Mr X] to address you', it might be arguable that he had not made an address in terms of the Act. But, the second appellant said more than that; he extolled the fortitude of the supporters of the WP for being present on a rainy day and in showing 'them' that as citizens they were not cowards. It was a short but defiant speech to lift the spirits of the WP members who were present. Accordingly, I reject his counsel's submission.

The next contention of the first appellant was that there was no evidence that he had provided public entertainment in terms of s 18(2) of the Act. He submitted that the evidence showed that he had merely participated in the public entertainment that was provided. In my view, there is again no substance in this argument. The word 'provide' in the context of s 18(2) means 'supply'. A person may supply the entertainment by performing it himself or by engaging someone else to perform it. Thus, any person who gives an address also, literally, provides the address, and if he does it in a public place without a licence, he commits an offence under the Act. As innocent guest speakers or entertainers may unwittingly commit offences under the Act, s 18(2) is designed to provide a defence to such participants. Whatever the precise effect of s 18(2) may be, it does not provide a defence to the appellants. They were not mere participants at the function. They were the organizers of the event. The application for the licence was made by the first appellant and the application form was signed by him. Both the first and second appellants were named as the speakers. They were respectively the secretary-general and chairman of the WP. The occasion was the opening of the WP's branch premises. It was clearly an important occasion for the WP as was evident from the contents of the first appellant's speech. In my view, this evidence was sufficient to prove, in the absence of rebutting evidence, that the event, including the speeches, was planned and arranged by the appellants as the two principal office bearers of the WP. They were not guest speakers who merely took part in the event. I have no doubt that the first appellant provided the public entertainment, if not in the form of his own speech, then in the form of the speech made by the second appellant. The position of the second appellant was exactly the same, save that he did not sign the application form. But, as chairman of the WP, he could not, and he did not, say he had nothing to do with the organization of the event. In his case, I have no reasonable doubt that he had also provided public entertainment by his own speech or if not, by the first appellant's speech.

I turn now to the constitutional argument advanced by the first appellant, which is that he was wrongfully denied his constitutional right to freedom of speech and expression given to him as a citizen by art 14 of the Constitution. I set out below the material parts of this article.

> (1) Subject to clauses (2) and (3)
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> (a) every citizen of Singapore has the right to freedom of speech and expression;
> (b) all citizens of Singapore have the right to assemble peaceably and without arms; and
> (c) all citizens of Singapore have the right to form associations.
>
> (2) Parliament may by law impose
>
> (a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;

It is not disputed by the first appellant that the constitutional right to freedom of speech and expression is not an absolute right exercisable by any citizen without any restraint in all circumstances, but one which is subject to the power of Parliament to enact any law to impose on such right such restrictions it considers necessary or expedient in the interest of any of the matters enumerated in art 14(2) of the Constitution. The first appellant has also not contended that the Act is not such a law within the scope of art 14(2) of the Constitution. His case is that the decision of the licensing officer in refusing his application was not made in relation to any of the matters in respect of which the Constitution has permitted Parliament to restrict the right to freedom of speech and expression, that is to say, in the interest of public order or public morality or the security of the state. Specifically, he contended that the licensing officer rejected the application because he was told to do so by an official in the Ministry of Home Affairs, and had therefore failed to exercise his power at all or properly, or if that were not the reason for the rejection, the licensing officer had no other reason for rejecting the application; in either case, the decision was bad in law as there was no nexus between the decision and the objects of the Act. That being the case, it was then contended that no

offence had been committed as he was exercising his constitutional right.

Leaving aside for the moment the validity of the legal conclusion that he had committed no offence if the decision of the licensing officer were wrong, what was the evidence relied upon by the first appellant to show that it was wrong? The relevant part of the licensing officer's testimony was as follows:

> On receipt of P26 (the application for the licence) I checked through the application to see whether the necessary columns were completed and I proceeded to check my records to see whether there have been similar applications from political parties in the past. I found that there were none. I then proceeded to refer the application to my immediate supervisor in the Criminal Investigation Department for his transmission to the Ministry of Home Affairs for instructions. All this is necessary in the normal screening of the applications. I also informed the Deputy Commissioner of Police Operations Command of this application; Director CID and other command officers. They were informed clearance was also sought from Area Commanders and 'A' Division in which area 80 Boat Quay is. Prior to application I did not check for exemption order because there was no such application seeking exemption from the applicant. By 9 January 1987, the decision was arrived in the evening of 9 January 1987. The application was rejected.

Under cross-examination, the licensing officer (PW4) made the following admissions: that the application, being from a political party, was referred to the Ministry of Home Affairs in compliance with normal administrative procedure; that in point of time the application was rejected on the evening of 9 January 1987 immediately after he had spoken with one Lim Siam Kim, then deputy secretary of Home Affairs. When the first appellant questioned PW4 as to whether Lim had told him to refuse the application, the trial judge disallowed the question on the ground that it was not relevant. When PW4 was questioned on his reasons for refusing the application, the trial judge again disallowed the question on the ground that the issue before the court was whether public entertainment had been provided, the absence of a licence not being disputed. When the first appellant put to PW4 for his answer an assertion of fact and law that PW4 had refused the application on the direction of the Minister or the permanent secretary and that the decision was contrary to the Constitution and invalid under the Act, the suggestion was also disallowed by the trial judge.

That, briefly, was the evidence upon which the first appellant contended that the licensing officer failed to exercise his power and/or had no reason to refuse the application. The contention is plainly untenable for lack of a factual foundation. The licensing officer did not give his reasons because he was prevented from doing so. No inference could be drawn from this that he had no reasons to give, or that those reasons would be bad reasons. This is not a case where the court may draw an adverse inference against a witness for refusing or failing to give evidence of facts especially within his own knowledge. The correct position must be that as the matter now stands neither the first appellant nor the court knows the reasons for the rejection.

Under s 13(2) of the Act, the first appellant was entitled to ask the licensing officer for the reasons for rejecting his application. He omitted to exercise this right at that stage. He contended that he was still entitled to exercise it at the trial. In my view, he was wrong. The purpose of s 13(2) is not to enable a person charged for an offence under the Act to ask for the reasons at the trial. The purpose is to enable an aggrieved applicant to appeal to the Minister under s 14 of the Act. There was no question of an appeal to the Minister in this case.

It seems to me that the real thrust of the first appellant's submission was that if the licensing officer had been allowed to answer his questions, the answers might have been such as to have enabled him to satisfy the court that the refusal was wrong or unconstitutional. *If* this were the correct legal position, I would agree that the first appellant was entitled to cross-examine PW4 on the reasons for his decision. It is a basic rule in a criminal trial that the accused is entitled to put any relevant questions to any prosecution witness in order to elicit evidence to support his defence. A denial of that right could lead to a miscarriage of justice.

In support of the argument that he had committed no offence under the Act if the licence had been wrongfully refused, the first appellant referred to two decisions, viz *Madhavan Nair & Anor* v *PP*[1] and *Lau Dak Kee* v *PP*[2] (which authorities were made available to the court through the industry of the DPP). In my view, these decisions are distinguishable. Both cases arose out of the issue by the OCPD under s 27 of the Police Act 1967 of a licence to Madhavan Nair to hold a public meeting subject to the condition that no speaker should touch on matters relating to the MCE results and the status of Bahasa Malaysia as the national language. The appellants committed a breach of the condition and were charged accordingly. By way of defence, the appellants argued that the condition was unconstitutional as being in breach of art 10(2) of the Malaysian Constitution (which corresponds in all material respects to art 14(2) of the Constitution). It was held in both cases that the condition was valid. If, in those cases, the condition had been declared invalid on the ground of unconstitutionality, the appellants would have committed no offence as the licence granted to them would have become an unconditional licence. In the present case, the appellants had no licence at all.

The soundness of the first appellant's submission may be tested by assuming that the licensing officer wrongfully refused the licence. What were his legal rights? The court would have quashed the decision if the appellants had commenced proceedings for judicial review.

The licensing officer would then have to consider the application afresh. If he refused, the court would have the power to direct him to do so. But, the court would not have been able to grant a licence to the first appellant or direct the licensing officer to do so, as the power of court is exercisable by way of supervisory jurisdiction in these matters. Therefore, the invalidity of the decision of the licensing officer would result in nothing more than the appellants' status quo ante the application. They would still have had no licence when they provided the public entertainment. The law was that no public entertainment might be provided without a licence under the Act and except in accordance with the terms of the licence. The law was not that public entertainment might be provided subject to such restrictions as might be imposed under the Act. It must follow that the answers of the licensing officer, whatever they might have been, could not have provided any defence to the appellants on the charges against them.

In my view, the only available defence to the charges, in the context of this case, would be that the Act (or, what is the same thing, the scheme of licensing established by the Act) is unconstitutional as being in contravention of art 14(2) of the Constitution to the extent that it affects the right to freedom of speech and expression. But neither appellant made any submission to such effect. Indeed, when the court inquired of the first appellant whether he was making this submission, he replied that he was not. He went on to submit that even though s 13(1) of the Act provided that the licensing officer might in his discretion refuse any application for a licence, that discretion could not be exercised arbitrarily in view of s 14 which was, as he put it, a guide as to how the discretion should be exercised. As s 14 provides for the cancellation at any time of a licence under the Act for any reason connected with, inter alia, public order, public morality or the security of the state, which are interests in respect of which Parliament may legislate to impose restrictions on the constitutional right to freedom of speech and expression, this was in effect a submission or a concession that the Act, even to that extent, was within the scope of art 14(2) of the Constitution. If the discretion vested in the licensing officer under the Act were absolute and untrammelled, there might be a case for arguing that the licensing scheme is unconstitutional, as then the licensing officer would have been vested with arbitrary power to deprive a citizen of his constitutional right to freedom of speech and expression contrary to the objects of art 14(2): see *Indulal* v *State of Gujarat*[3] and *Arthur Francis* v *Chief of Police*.[4]

In *Indulal* v *State of Gujarat*,[3] Miabhoy J, after a full review of the US and Indian authorities on the right to freedom of speech and expression under the constitutions of those countries, upheld a statutory scheme of licensing the use of loudspeakers at public meetings which vested the power to grant or withhold such licences in the Police Commissioner of Ahmedebad on the ground that under the statute in question such power was not arbitrary and untrammelled. Miabhoy J, at p 270 para 28, said:

> That the licence cannot be arbitrarily refused is also quite clear from the fact that, in the licensing rules, the use of as loudspeaker is prohibited only in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or the passengers in the vicinity. Thus the extreme power of prohibiting the user of loudspeakers is also not a naked and arbitrary power, but, it is hedged in by a few conditions which indicate the policy governing the exercise of that power. The objects which are to be achieved by making such a rule are clearly mentioned. As we have already pointed out these objects can best be achieved by the Legislature by leaving the powers in the hands of those on whom the duty of preservation of the public order is imposed from day to day.

In another part of his long judgment when dealing with the possibility that the power of licensing might be abused, Miabhoy J, at p 269 para 26, said:

> Moreover, a study of the various provisions of the Bombay Police Act reveals the policy of the Legislature and the purpose for which the Act is enacted and, as we have already pointed out, there is authority of the Supreme Court which has clearly laid down that if a power is given to an executive officer, the power has necessarily to be exercised by the officer in enforcement of that particular policy. It is conceivable that a partial or a corrupt official may in a particular case ignore the policy of the Act and may so use his power that, on a particular occasion, he may, on extraneous considerations, deprive the citizen of the right of the use of a loudspeaker. But, as has been pointed out in AIR 1954 SC 465, a restriction cannot be held to be unreasonable on the ground that the power may be exercised by an officer mala fides. As pointed out in the same case, in such a case, the arms of the court are strong enough to deal with such a refractory officer.

In *Arthur Francis* v *Chief of Police*,[4] the Privy Council, after reviewing decisions from the United States, India, Pakistan, the West Indies and Canada and identifying the principles to be applied to determine the extent to which the constitutional right of free speech and expression under the constitutions of those countries could be validly restricted by ordinary legislation, held that s 5 of the Public Meetings and Processions Act 1969 did not constrain s 10 of the Constitution of St Christopher, Nevis and Anguilla. Section 10 provided for the enjoyment of freedom of expression subject however to the power of the legislature to enact laws that are reasonably required in the interest of defence, public safety public order, public morality or public health and other matters. Section 5 of the said Act provided that no person might use any noisy instrument at any public meeting without the permission of the Chief of Police who might, in his discretion, grant permission upon such terms and conditions and subject to such restrictions as he might think fit. Lord Pearson, in delivering the opinion of the Privy Council, at pp 772-773, said:

> Whatever may be the exact construction of s 10, it must be clear that (1) a wrongful refusal of permission to use a loud-

speaker at a public meeting (for instance if the refusal is inspired by political partiality) would be an unjustified and therefore unconstitutional interference with freedom of communication, because it would restrict the range of communication, and (2) some regulation of the use of loudspeakers is required in order that citizens who do not wish to hear what is said may be protected against 'aural aggression' if that might reach unbearable intensity.

As some regulation of 'noisy instruments' is required, and a system of licensing is the natural method, there must be some licensing authority to grant or refuse the permission. The legislature of the state concerned has decided that the Chief of Police is the suitable officer to be given this power and duty. There is convenience in that choice, as he is concerned with the preservation of public order and knows the prevailing conditions affecting it and therefore is able to give a quick decision. There is no evidence, and no reason to infer, that he has abused the power or would be likely to abuse it in any way. It is reasonable to assume that the legislature, knowing the local conditions, made a suitable choice of licensing authority.

The final question is whether s 5 of the Act is so defective as to be unconstitutional because it does not expressly lay down guidelines for the exercise by the Chief of Police of his licensing power. Whether or not it might have been better to have some express provision as to the way in which his discretion should be exercised, he is not without guidance. It is plain from the preamble to the Act and from its provisions as a whole that its object is to facilitate the preservation of public order. That being the object of the Act, he must exercise his powers bona fide for the achievement of that object. *Roncarelli* v *Duplessis* (1959) 16 DLR (2d) 689, per Rand J (with whom Judson J concurred), at p 705, per Martland J (with whom Kerwin CJ and Locke J concurred) at p 742 and per Abbott J at p 729. Section 5 is not defective, or at any rate not seriously defective, in this respect. It does not contravene the Constitution.

Article 14 of the Constitution does not contain the same language as that in s 10 of the Constitution of St Christopher, Nevis and Anguilla or as that in art 19 of the Indian Constitution; (the latter constitutions permit only 'reasonable' restrictions on constitutional rights). However, I am of the view that the test of constitutionality applied in both *Indulal*[3] and *Arthur Francis*[4] is relevant to determine whether the Act contravenes art 14(2).

In *Arthur Francis* v *Chief of Police*,[4] the Privy Council said that a wrongful refusal of permission to use a loudspeaker at a public meeting would be an unjustified and therefore unconstitutional interference with freedom of communication. The Privy Council however did not say what the consequence of such a breach was. As their Lordships had specifically held that s 5 was not in breach of the Constitution, the consequence could not possibly be the invalidity of s 5 but rather the invalidity of the decision itself. A decision which is invalid for unconstitutionality does not, by itself, make the law under which the decision is made invalid. A law which is invalid for unconstitutionality makes all decisions made under it invalid.

Accordingly, as the Act is not unconstitutional, it follows that the appellants were properly convicted on the charges faced by them.

Before I consider the submission in relation to the appeals on sentence, I should like to refer to a material fact in these appeals which appeared to have escaped the attention of counsel and the DPP. It should be recalled that the charges on which the appellants were convicted were that they had provided public entertainment at No 80, Boat Quay. The evidence proved conclusively, and the first appellant has admitted in the course of the argument before me, that the speeches were made on the five-foot way of No 80 Boat Quay which was in law a public thoroughfare for pedestrians, and therefore a place to which the public had access. It should also be recalled that the application made by the first appellant for the licence was for public entertainment to be provided at 'the opening ceremony of Workers' Party premises at No 80-A Boat Quay'. In P26, the same address was given in the column bearing the caption 'Address or locality at which event will take place'. These premises, as admitted by the first appellant, was the second level of the two-storey building, whereas No 80-A occupied the first level of the building. No 80 Boat Quay was not the same place as No 80-A Boat Quay. The first appellant had never applied for a licence to provide public entertainment at No 80 Boat Quay. It must follow that whatever the fate of the application was in this case, the appellants had no defence to the charges against them.

I turn now to the appeals on sentence. The appellants were both fined $3,500. The district judge in imposing the fine of $3,500 each took into account the following factors: (1) the previous convictions of the appellants (five in respect of the first appellant and four in respect of the second appellant); (2) their deliberate intention to commit the offence in the knowledge that they had no licence under the Act; and (3) their mitigation speeches. The first appellant contended that the fines of $3,500 was manifestly excessive having regard to the nature of the offence, the maximum penalty for the offence (a fine not exceeding $5,000), and the judgment of the Privy Council in *Jeyaretnam* v *Law Society of Singapore*.[5] In that case, the Privy Council declared that the first appellant had been wrongly convicted of the four Penal Code offences which the district judge had taken into account.

He therefore submitted that the sentence was manifestly excessive and wrong to the extent that it had taken into account these convictions. Further, he submitted that although the district judge had also taken into account one other previous conviction for which he was fined $1,500, that conviction was for a different and unrelated offence under s 3(2) of the House To House And Street Collections Act (Cap 128, 1985 Ed) and in respect of which the maximum penalty was a fine of $5,000 or

imprisonment for a term not exceeding two years or to both. He also contended that he had complied with the law by applying for a licence and that the rejection came too late for him to cancel the function as he had invited foreign dignitaries to attend it.

The second appellant also had four previous convictions, having been convicted jointly with the first appellant in respect of the Penal Code Offences. His counsel accordingly submitted that the fine of $3,500 was manifestly excessive and wrong on the same ground relied upon by the first appellant. Counsel also claimed that his client did not know that a licence was required or that the licence had not been obtained when he addressed the gathering, and that the second appellant had merely made a welcoming speech of about one to two minutes, and that, unlike the first appellant, the second appellant was not told by the police to refrain from speaking.

The deputy public prosecutor's submission was that the sentence was not manifestly excessive for the following reasons: (a) that the appellants showed a brazen disregard of the law and had committed the offence knowing full well that they did not have a licence; (b) that the police had been inconvenienced in that they had to perform crowd control duty; and (c) that the appellants in committing the offences had failed to pay the licence fees. The deputy public prosecutor declined to make a submission on whether this court should, for the purpose of determining the appropriateness of the sentences, have regard to the decision of the Privy Council in *Jeyaretnam* v *Law Society of Singapore*.[5] Instead, he submitted that the said convictions were irrelevant to the present conviction and that he did not wish to rely on them for the purpose of these appeals on sentence. In view of the stand taken by the deputy public prosecutor and the fact that he has not addressed me on the status of these convictions, I do not propose to say more about them. I shall disregard them as irrelevant for the purpose of determining the appropriateness of the sentence under appeal.

On this basis, the first appellant had one previous conviction for an unrelated offence and the second appellant had no previous conviction. The only other negative factor against the appellants was that they had deliberately broken the law. That, of course, is not an exceptional factor as it is normally present in most convictions. It is a factor which is more important when imposing sentences for subsequent offences of a similar nature. There were no other adverse factors that could be put on the scale against the appellants. There was no evidence that any disorderly conduct or breach of the peace had occurred at or in connection with the addresses made by the appellants or that any member of the public or any of the residents of the neighbouring premises had been unduly inconvenienced, or that their peace of mind or tranquility unduly disturbed by this infraction of the law.

Taking into account all the circumstances of this case, including the nature of the offence and conduct of the appellants, I am of the view that a fine of $1,500 would be the appropriate sentence to be imposed on each of them.

The appeals against conviction are dismissed and the appeals against sentence are allowed to the extent that the fines are reduced to $1,500 in respect of both appellants.

Order accordingly.

Solicitors: *Ling & Co.*

Reported by *Terence Tan Bian Chye*

Abdul Salam bin Mohamed Salleh v Public Prosecutor

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 185 OF 1987
CHAN SEK KEONG J
5 OCTOBER 1989

Criminal Law — Causing disappearance of evidence — Burden of proof on offender to explain why evidence disappeared — Penal Code (Cap 103, 1970 Ed), s 201 — Criminal Procedure Code (Cap 68, 1985 Ed), s 256(b)(iii) — Misuse of Drugs Act (Cap 185, 1985 Ed), s 6(a)

Criminal Procedure — Notes of evidence of trial judge faulty — Whether accused convicted on a non-existent charge — Whether there was miscarriage of justice

This was an appeal by the appellant against his conviction and sentence of four months' imprisonment on a charge under s 201 of the Penal Code (Cap 103, 1970 Ed) that he had, while a sergeant investigating drug abuse attached to the Tanglin Police Station, caused evidence of the commission of an offence to disappear by deliberately not enclosing a statement recorded under s 120 of the Criminal Procedure Code (Cap 68, 1985 Ed) of an accused person.

The trial judge disbelieved the reasons given by the defence for the disappearance of the evidence and convicted the appellant. The appellant appealed against both conviction and sentence. The first and main ground of appeal was that there was a miscarriage of justice in that the appellant had been convicted on a charge which had not existed or had not been framed or read or explained to the appellant.

Held, dismissing the accused's appeal:

(1) The manuscript notes of evidence of the whole trial are irrefutable evidence that the s 201 charge to which the appellant had claimed trial had never been amended, that the defence was called on that charge and he was convicted on that charge.

(2) The appellant submitted that the trial judge had failed to explain how he had recorded an application by the DPP to amend the original charge when there was none. The court accepted this as a valid criticism. But the relevant question before the court is not why he did it, but whether this unexplained occurrence had in any way influenced his subsequent